more desirable than that of the other, offer inducement to parties to come to it. They come to the conclusion that such conduct is unfair, and preferring to rely upon the merits of their places, make a contract to be no longer parties to such a system of unfair competition. Such a combination is valid: *Koehler* v. *Feuerbacher*, 2 Mo. App. 11 (1876). And it would seem that if the merchants in a town should make a compact to employ no drummers for trade, or if hotel keepers should agree not to employ runners, the courts would sustain the compact: Per BAKEWELL, J., Ibid.

COMBINATIONS TO SECURE LEGITIMATE ADVANTAGES BUT NOT ALLOWED BY LAW.—It is well known that only the artizan had a lien upon the subject upon which he bestowed his labor, as security for the payment of the value of his services. Suppose those engaged in a business allowed no such lien, as certain bleachers and dyers once did, combine and agree to take no work unless allowed a lien upon the goods, would such a compact be valid? Lord KENYON could see nothing in such a combination which was repugnant to his notions of honesty or public policy. It was merely an agreement by those who had the option either to work for this or that person, as they chose that they wonld not receive the goods of any person who would not consent that they should be retained for a general balance that might happen to be due to them. The case of innkeepers he declared to be entirely distinct, because these are bound to receive guests and to protect their property. The compact, "so far from being illegal," was "founded on justice:" *Kirkman* v. *Shallcross*, 6 T. R. (D. & E.) 14 (1794).

ELISHA GREENHOOD.

St. Louis.

Supreme Court of Wisconsin.

HOVERSON *v.* NOKER.

Plaintiff was injured by the frightening of her horse by two boys, who shouted and fired pistols as she passed their father's premises. In an action against the father, *held*, that it was proper to show that such acts had been previously performed by the boys, sometimes in their father's presence.

To make the father responsible it is necessary to connect him with the acts of the sons, and show that he permitted that to be done upon his premises which was likely to result in damage to passers by. But it is not necessary that he should have directed his sons to do the wrongful act by express words of command.

Where a husband is a party with his wife in an action for damages for injury by third parties to her, he is a competent witness for the plaintiffs, so long as he remains a party to the record.

APPEAL from the Circuit Court, Kewaunee county.

R. L. Wing and *W. H. Timlin*, for appellant.

Nash & Nash, for respondents.

TAYLOR, J.—The plaintiffs in this action are husband and wife,

and the defendants are father and his two sons. The action was in the nature of an action on the case for an injury to the wife, caused, as alleged in the complaint, by the joint acts of the defendants. The evidence on the trial shows pretty clearly that while the plaintiffs were passing along the highway with their team and wagon in front of the defendant's house on a Sunday, going to church, the two young sons of the defendant, Frank Noker, came out of their father's house and fired off a pistol and shouted, and so frightened the plaintiffs' horses that they jumped suddenly forward and threw Sarah Hoverson out of the seat and injured her; and in the afternoon, on their return from the church, the boys again fired the pistol and shouted and again frightened the plaintiffs' horses, but did not injure Mrs. Hoverson to as great an extent as in the morning. The jury, under the instructions of the court, found a special verdict, and assessed the plaintiff's damages at the sum of five dollars. From the judgment entered on such verdict Sarah Hoverson appeals to this court.

The case, though not involving any great amount of money, has been argued by counsel orally and in the submitted briefs with a degree of ability and care highly commendable. The learned counsel for the appellant presents several points upon the rulings of the court upon the trial rejecting evidence offered by him, for which he claims the judgment should be reversed. It will be seen by an examination of the record that it became important for the plaintiffs to connect the father with the acts of his young sons, which the plaintiffs allege caused the injury complained of, and for this purpose the plaintiffs offered evidence tending to prove that the sons had frequently, before the day upon which the accident happened, called abusive names, shouted, and frequently discharged fire-arms when persons were passing the house of the defendants, and that this was often done in the presence of their father. All evidence of this kind was excluded. This, we are inclined to hold, was error. If the father permitted his young sons to shout, use abusive language, and discharge fire-arms at persons who were passing along the highway in front of his house, he permitted that to be done upon his premises which, in its nature, was likely to result in damage to those passing, and when an injury did happen from that cause he was not only morally but legally responsible for the damage done. If a parent permits his very young children to become a source of damage to those who pass the highway in front

of his house, he is as much liable for the injury as though he permitted them to erect some frightful or dangerous object near the highway which would frighten passing teams; and in such case he cannot screen himself by saying that he did not in words order the erection to be made. If he made it himself, with the intention to frighten passing teams, he would be responsible for the injury caused by it; and when he permits his irresponsible children to do it he is equally liable, because he has the control of his premises as well as of the children, and is bound to restrain them from causing a dangerous thing to be erected on his premises near the highway; and permitting his young sons to become an object of fright to teams passing, is certainly equally if not more reprehensible than permitting an inanimate structure to be placed where it would cause such fright. We think the evidence ought to have been admitted in order to connect the father with the acts of the young sons which caused the injury when the plaintiffs were on their way to church in the morning, as well as when on their return from the church in the afternoon.

The next error complained of is the refusal of the court to permit the husband to be examined as a witness on the trial. Although the action was for the recovery of damage done to the person of the wife, still the husband was a party to the action, and under the decisions of this court he was a competent witness for the plaintiffs. It seems to us that the ruling of the court below was in direct conflict with the decisions of this court in *Hacket* v. *Bonnell*, 16 Wis. 471, which decision was approved and affirmed by this court in the case of *Snell* v. *Bray*, 56 Wis. 156–161. See also, *Holmes* v. *Fond du Lac*, 42 Wis. 282; *Kaime* v. *Village of Omro*, 49 Id. 371, and *Barnes* v. *Martin*, 15 Id. 240. We think the husband was a competent witness in the case so long as he remained a party to the record, and it was error not to permit him to be examined.

Other exceptions to the rejection of evidence were taken, but it is unnecessary to consider them, as they will not be likely to occur upon a new trial.

The nonsuit in favor of the father upon the first cause of action stated in the complaint was, we think, improperly granted, even upon the evidence admitted by the court. There was at least some evidence admitted upon which the jury might have held the father liable for the acts done in the morning. On the case made by the plaintiffs, under the too strict rule held by the court as to the admis-

sion of evidence, there was still enough to carry the case to the jury upon both the causes of action stated in the complaint; at least, so far as the father was concerned.

The exceptions to the rulings as to the form of the special verdict need not be considered, as there must be a new trial for the errors above suggested. We deem it proper, however, to say that the judge, in his instructions upon the following question submitted to them: "Did the defendant Frank Noker direct his sons, the other two defendants, to make the noise they did when the plaintiffs were passing the house with their team?" fell into an error when he instructed them "that in order to answer this question in the affirmative they must be satisfied from the evidence that he by *word* so directed his sons to make the noise." This was too strict a limitation upon the subject. The evidence might have satisfied the jury that he directed the acts of his sons, but they might be unable to find evidence that he did so direct it by express words of command. Certainly no express command to do as they did was necessary to hold the father liable for their acts.

For the errors mentioned the judgment must be reversed. The judgment of the circuit court is reversed, and the cause remanded for a new trial.

The number of cases touching the first point decided in the principal case is not large. Mr. Schouler, in his valuable work on The Domestic Relations, § 263, lays down the rule thus: "On the whole, it may be stated as a rule, that a father is not liable in damages for the torts of his child, committed without his knowledge, consent or sanction, and not in the course of his employment of the child." The doctrine so well stated is amply supported by authority: *Chandler* v. *Deaton*, 37 Tex. 406; *Paulin* v. *Howser*, 63 Ill. 312; *Edwards* v. *Crume*, 13 Kans. 348; *Tifft* v. *Tifft*, 4 Den. 175; *Bahn* v. *Haldeman*, 24 Mo. 219; *Paul* v. *Hummel*, 43 Id. 119; *Moon* v. *Towers*, 8 C. B. (N. S.) 611. In the case last cited, the defendant's son, a youth about 17 or 18, in his employ, caused a servant whom he suspected of obtaining money from him by false pretences, to be apprehended and taken before a magistrate, who remanded him, but ultimately discharged him. After the remand the son told his father what he had done; the latter did not prohibit his son from proceeding in the matter, but said that, as he (the son) had begun it, he would not interfere. *Held*, by ERLE, C. J., WILLES, J. and BYLES, J., *dubitante* WILLIAMS, J., that there was no evidence for a jury, either of previous authority or subsequent ratification by the father.

The cases in which the father has been held liable are very few, and are all, so far as we can learn, based upon authority, express or implied, to do the unlawful act. Thus, in *Strohl* v. *Levan*, 39 Penn. St. 177, it was held that trespass would lie against a father for an injury committed by his team, when driven by a son with whom he was riding at the time. THOMPSON, J., said: "Here the son was driving, and

the father, the defendant, was riding. The latter made no objection or endeavor to control his son; and, if he did not, it was a presumption which a jury might well make, and which I think they were bound to notice, that he assented to that which was done in the management of the instrument (team) which did the injury, and therefore, per consequence, was answerable, provided the result was not an unavoidable accident, which the jury have found was not the case, the question of negligence or wilfulness having been submitted to them." See, also, *Lashbrook* v. *Patten*, 1 Duv. 316; *Dunks* v. *Grey*, 3 Fed. Rep. 862, and cases therein cited.

The modern rule of the civil law in European countries is said to make every person responsible for injuries caused by the acts of persons and things under his dominion; but a father incurs no responsibility for the act of his minor child, if he can prove that he was not able to prevent the act which gives rise to the liability: Schouler Dom. Rel., sect. 263; Civ. Code France, art. 1384. The same principle has been adopted in Louisiana; *Chambaud* v. *Mayo*, 19 La. (O. S.) 414. For the rules of the Roman Civil Code, see Gaius, 6 iv., § 75; Inst. Lib. iv. tit. viii.; Hunter's Roman Law (London ed.) (1876) p. 51. Upon the whole, though the principal case goes rather farther than any common-law case we have seen, it seems to be based upon sound principles, and to establish a salutary doctrine.

MARSHALL D. EWELL.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF GEORGIA.[1]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[2]

SUPREME COURT OF MISSOURI.[3]

SUPREME COURT OF RHODE ISLAND.[4]

SUPREME COURT OF WISCONSIN.[5]

ACTION. See *Bills and Notes; Contract.*

AGENT. See *Trover.*

Proof of Authority—Canvassing Agent.—The employment of a canvassing agent for the sale of books by subscription, confers no authority to receive payment for books sold but not delivered by him, nor ever in his possession: *Butler* v. *Dorman*, 68 Mo. 298, followed. *Chambers* v. *Short*, 79 Mo.

ASSIGNMENT. See *Partnership.*

Invalidity—Conveyance of future Wages.—An assignment of wages to

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[1] From J. H. Lumpkin, Esq., Reporter; the cases will probably appear in 59 or 60 Ga. Rep.

[2] From John Lathrop, Esq., Reporter; to appear in 136 Mass Rep.

[3] From T. K. Skinker, Esq., Reporter; to appear in 79 Mo. Rep.

[4] From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.

[5] From T. K. Conover, Reporter; the cases will probably appear in 70 or 71 Wis. Rep.